

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
Sameer S. Marathe	)	Art Unit: 3683
	)	
Application No.: 10/670,857	)	Examiner: Christopher Schwartz
	)	
Filed: September 25, 2003	)	
	)	
Title: Apparatus and Method for Monitoring	)	
Braking System Pressure	)	
	)	Peoria, Illinois
Attorney Docket No.: 03-106	)	August 23, 2006
_____	)	

Mail Stop **Petition**  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

## **PETITION TO WITHDRAW HOLDING OF ABANDONMENT OF PATENT APPLICATION**

### **I. INTRODUCTION**

A Notice of Abandonment was mailed on August 1, 2006. In accordance with 37 C.F.R. § 1.181, and following the practice outlined in M.P.E.P § 711.03(c), applicant respectfully requests that the holding of abandonment was incorrect for the reasons stated herein, and applicant requests that the holding of abandonment be withdrawn.

## **II. ARGUMENT IN SUPPORT OF WITHDRAWING THE HOLDING OF ABANDONMENT**

### **A. Summary Of Procedural History**

An Office action was issued October 27, 2005. In response, a Notice of Appeal After Final Rejection, and a Pre-Appeal Brief Request for Review were filed and received by the Office on January 10, 2006. A Notice of Panel Decision from Pre-Appeal Brief Review was mailed on February 28, 2006 ("the Panel Decision Notice").

### **B. Period for Filing the Appeal Brief Following the Panel Decision Notice**

The pre-appeal brief review is a program established by the U.S. Patent and Trademark Office by notice in the Official Gazette on July 12, 2005. The notice is believed to be the governing authority for the administration of the program, because no formal administrative rulemaking has occurred.

The Official Gazette notice which established the pre-appeal brief program states in Section 7 that "[t]he time period for filing an appeal brief will be reset to be one month from mailing of the decision on the request, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater." In addition to this authority from the Official Gazette notice, the Panel Decision Notice also contains a substantially similar statement.

According to each of these statements, the time period for filing an appeal brief following the pre-appeal brief conference is the greater of two months from the date the Notice of Appeal was received by the Office, or one month from the mailing date of the Panel Decision

Notice. The Notice of Appeal was received by the Office on January 10, 2006, and the end of a two month period following this date would fall on March 10, 2006. The Panel Decision Notice was mailed on February 28, 2006, and the end of a one month period following this date would fall on March 28, 2006. The latter of these two dates is March 28, 2006, thus the time period for filing an appeal brief in the present application expires on March 28, 2006.

The table below summarizes this examination of the appeal brief due date:

**Calculation of Due Date for Notice of Appeal**

Notice of Appeal		Panel Decision Notice	
Received by Office	Jan. 10, 2006	Mailed	Feb. 28, 2006
+	2 months	+	1 month
=	Mar. 10, 2006	=	<b>Mar. 28, 2006</b>

**C. Extension of the Period for Filing the Appeal Brief**

The Official Gazette notice which established the pre-appeal brief program states in Section 7 that "...the time period for filing of the appeal brief is extendible under 37 C.F.R. 1.136 based upon the mail date of the decision on the request or the receipt date of the notice of appeal, as applicable." In addition to this authority from the Official Gazette notice, the Panel Decision Notice also contains a substantially similar statement.

According to each of these statements, the time period for filing an appeal brief following the Panel Decision Notice is extendible under 37 C.F.R. § 1.136 ("Rule 136") whether the time period end date is calculated as two months after the receipt by the Office of the Notice of Appeal, or one month after the mailing date of the Panel Decision Notice. The due date for the appeal brief in this application is March 28, 2006, calculated as one month after the mailing date of the Panel Decision Notice. According to each of the Official Gazette notice, and the Panel Decision Notice, this period is extendible under Rule 136. Rule 136 provides for extensions of time up to a maximum of five months. Thus, the period for filing the appeal brief, which expires on March 28, 2006, may be extended up to five months to August 28, 2006.

The table below summarizes this examination of the appeal brief due date maximum extension:

**Calculation of Extension of Due Date for Notice of Appeal**

Notice of Appeal		Panel Decision Notice	
Received by Office	Jan. 10, 2006	Mailed	Feb. 28, 2006
+	2 months	+	1 month
=	Mar. 10, 2006	=	Mar. 28, 2006
		+	5 month extension
		=	Aug. 28, 2006

Thus, the holding of abandonment was premature because an appeal brief may be submitted as late as August 28, 2006.

III. CONCLUSION

Applicant respectfully requests that the holding of abandonment be withdrawn because the period for filing the appeal brief can be extended to August 28, 2006. Applicant intends to file an Appeal Brief, together with a petition to extend the period, on or before August 28, 2006.

Any questions concerning this petition may be directed to the undersigned.

Respectfully submitted,



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